IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 241 of 2007
(Old No. 1055/1986)

1. Ram Singh S/o Pawan
2. Bhullan S/o Birbal
3. Sahendra S/o Birbal (since deceased)
4. Mahipal S/o Pawan (since deceased)

All residents of Village Tikola Kalan
P.S. Manglore, District Saharanpur.

…… Appellants

Versus

The State …… Respondents

Mr. S.K. Agarwal, Sr. Advocate assisted by Mr. S.S. Bhandari, Advocate for the appellants.
Mr. Amit Bhatt, Addl. Government Advocate for the respondent-State.

Coram : Hon'ble Prafulla C. Pant, J.
Hon'ble Dharam Veer, J.

Dt: 11th December, 2007.

Hon. Prafulla C. Pant, J. (Oral)

This appeal, preferred under Section 374(2) of the Code of Criminal Procedure, 1973, is directed against the judgment and order dated 24.03.1986, passed in Sessions trial No. 185 of 1985, by learned III Additional Sessions Judge, Saharanpur, convicting all the four appellants under Section 302 read with Section 34 and under Section 201 of the Indian Penal Code, 1860 (hereinafter referred as I.P.C.), and sentencing under Section 302/ 34 I.P.C. each of the appellant to life imprisonment and under Section 201 of

I.P.C. to rigorous imprisonment for a period of five years. (Earlier police station Mangalore was part of District Saharanpur, which is now part of District Haridwar, Uttarakhand).

2) Heard learned counsel for the parties and perused the entire evidence on record.

3) The prosecution story in brief is that complainant Netra Pal (P.W. 1) on 19.09.1984 at about 1:15 P.M., lodged the first information report (Ext. A-1) with police station Manglore against the appellants Bhullan, Sahendra, Mahipal and Ram Singh, in which it was alleged that some 7-8 months before the aforesaid date, appellant Bhullan's brother was murdered in which the said appellant suspected the role of Meghraj (deceased). On 19.09.1984, at about 11:00 A.M., complainant Netra Pal (P.W. 1) accompanied with Meghraj (deceased) was going towards his field through Gurukul Narsan road. When they reached near a culvert, all the four appellants named above, armed with country made pistols and guns stopped the two. Appellant Bhullan exhorted the other three appellants saying that they had an opportunity to take revenge for commission of murder of his brother allegedly committed by Meghraj. On this, the three appellants namely Bhullan, Sahendra and Mahipal, each one of them fired one shot from the firearms they possessed, at Meghraj. Meghraj, on being injured started felling down and at that time appellant Ram Singh, who was also armed with a country made pistol gave a blow on the head of the deceased with the butt of the firearm, he possessed. The incident was also witnessed by

Baru (P.W. 5), Haria (P.W. 2) and two others namely Girvar and Sitab. All the witnesses thereafter saw appellant Mahipal taking the dead body of Meghraj on his shoulder. The four appellants then proceeded towards Jhabreda. The complainant and the witnesses followed them, but they were threatened by the appellants of dire consequences. According to the prosecution story, near the field of Nakli, the appellants stopped a 'Bugghi' (buffalo cart) and after carrying it to some distance threw the dead body from it in the field of Nakli and ran away. On the basis of the first information report a crime No. 182 of 1984 was registered with the police station Mangalore against all the appellants, and the crime was investigated by Station Officer Jitendra Kumar Sharma (P.W. 8). The said officer on 19.09.1984 inspected the spot and also proceeded to the place where the dead body was lying. The dead body was taken into possession by the Police and inquest report (Ext. A-6) was prepared along with the police form No. 13, police form No.33, and letter to the Chief Medical Officer (Ext. A-7 to A-9). The Investigating Officer also prepared the site plan (Ext. A-10). On the same day, the Investigating Officer went to the spot where the appellants were said to have committed murder of Meghraj and took the empty cartridges found from the said place and prepared the memorandum Ext. A-12. The Investigating Officer also took simple soil and blood stained soil from the place of occurrence and prepared Ext. A-13. He also took into possession the shoes of the deceased from the place of incident and prepared the memorandum Ext. A –14. The dead body was sent for postmortem examination in a sealed

Cover and the autopsy was conducted on the next day i.e. 20th September 1984, at about 11:15 A.M. by Dr. S.P.S. Verma (P.W. 6), who prepared the postmortem examination report (Ext. A-4) and opined that cause of death of the deceased was haemorrhage and shock due to ante mortem injuries. Meanwhile, the Investigating Officer recorded the statement of the witnesses and also sent the simple soil and blood stained soil and the shoes and Dhoti found from the place of incident for chemical examination of the Forensic Science Laboratory at Agra, from where a report (Ext. A-17) was received in which it was reported that the blood stained articles contained human blood. On completion of the investigation, the Investigating Officer submitted charge sheet against all the four accused named in the first information report namely Bhullan, Sahendra, Mahipal and Ram Singh for their trial in respect of offences punishable under Section 302 of I.P.C. and one punishable under Section 201 of I.P.C.

4) The Magistrate, on receipt of the charge sheet (Ext. A-16) after giving necessary copies to the accused, as required under Section 207 of the Code of Criminal Procedure, 1973, committed the case to the court of Sessions, for trial. After hearing the parties, charge of offence punishable under Section 302 read with Section 34 of the I.P.C. and one punishable under Section 201 of I.P.C. were framed by the trial court against all the four accused (appellants) on 18.07.1985, and thereafter amended charge was framed on 18.03.1986. All the accused pleaded not guilty and claimed to be tried. On this, prosecution got examined P.W. 1, Netra Pal (complainant and eyewitness);

P.W. 2, Haria (another eyewitness); P.W. 3, Head Constable Mangal Singh [who registered the F.I.R. (Ext. A-1) and prepared the check report (Ext. A-2)]; P.W. 4, Constable Mohan Lal (who took the dead body in a sealed cover with another constable Lakhi Ram for postmortem examination); P.W. 5, Baru (another eyewitness); P.W. 6, Dr. S.P.S. Verma (who conducted the autopsy on the dead body); P.W. 7, Bijendra (declared hostile) and P.W. 8, Jitendra Kumar Sharma (Investigating Officer).

5) The entire evidence was put to the accused under Section 313 of Cr.P.C. by the trial court, in reply to which the accused (appellants) alleged that the evidence adduced against them was false. They also pleaded that they were implicated due to enmity. No evidence was adduced in defence on behalf of the accused. After hearing the parties, the trial court found that the charge framed against all the four accused namely Bhullan, Sahendra, Mahipal and Ram Singh in respect of the offence punishable under Section 302 read with Section 34 of I.P.C. and one punishable under Section 201 of I.P.C., are fully proved. Thereafter, the trial court heard on point of sentence, and convicting the accused on aforesaid charges, sentenced each of the convicts (appellants) imprisonment for life under Section 302 / 34 of I.P.C. and rigorous imprisonment for a period of five years under Section 201 of I.P.C. Aggrieved by said judgment and order dated 24.03.1986, passed by the trail court (III Additional Sessions Judge, Saharanpur), this Appeal was preferred before the Allahabad High Court on 31.03.1986. The appeal was admitted by said Court on 13.05.1986. Thereafter, this appeal is transferred to this

Court under Section 35 of the U.P. Re-organization Act, 2000, for its disposal.

6) Before further discussion, it is pertinent to mention here ante mortem injuries found on the dead body of the deceased, by the Medical Officer P.W. 6, Dr. S.P.S. Verma, who made the entries of the injuries in the postmortem report (Ext. A-4). The same are being reproduced hereunder :-

i) Firearm wound of entry 1 cm X 1 cm on left thumb, charring present one metallic shot 1 cm X 1 cm recovered and sealed.

ii) Firearm wound of entry 1 cm X 0.7 cm just below the medial end of left clavicle.

iii) F.A. wound of entry 1 cm X 0.7 cm on right side of front of chest 2 cm below the medial end of right clavicle.

iv) Four abrasions on the front of neck extending from chin to injury No. (ii).

v) F.A. wound of exit 1 cm X 1 cm on the front aspect of right shoulder.

vi) Five F.A. wound of entry each 1 cm X 1 cm on the inner aspect of right upper arm burning and charring present, 3 shots recovered and two shots were through and through the exits on the outer aspect of right upper arm 1 cm X 1 cm each 0.7 cm X 8 cm above the right elbow respectively.

vii) F.A. wound of entry on the inner aspect of right forearm 1 cm X 0.7 cm, 9 cm below the elbow, charring present.

viii) F.A. wound of exit 8 cm X 4 cm on the outer aspect of right forearm 4 cm above the wrist.

ix) F.A. wound of entry 1 cm X 1 cm on left palm between index and middle finger.

x) Wound of exit 5 cm X 4 cm on the dorsum of right hand with fracture of middle and ring finger.

xi) F.A. wound of entry 2 cm X 1 cm on inner aspect of right knee joint. charring…….(paper torn) along with 4 wounds of exit each 1½ X 1½ cms on the outer aspect of upper part of leg and knee joint.

xii) Incised wound 4 cm X 1 cm bone deep / on left parietal bone 9 cm ….(paper torn) above the left ear.

xiii) F.A. wound of exit 3 cm X 2 cm, 6 cm below the ring finger angle of ….(paper torn) (left) concider the exit of injury No. (ii).

xiv) Abrasion 1 cm X 0.7 cm on back of trunk 13 cm below injury No. (xiii) at ….(paper torn) position.

xv) Abrasion 10 cm X 2 cm on the back of upper part of left thigh."

The Medical Officer found that the duration since death was about 1 to 1½ day. The Medical Officer opined that cause of the death was haemorrhage and shock due to the ante mortem injuries.

7) P.W. 1, Netra Pal, who lodged the first information report has stated on oath that he knows all the four accused namely Bhullan, Mahipal, Sahendra and Ram Singh. He

has further stated that Bhullan and Sahendra are real brothers and so are Mahipal and Ram Singh. It is further stated that Mahipal and Ram Singh are close to Bhullan. Stating that about 7-8 months before the date of incident, one Mahendra, brother of Bhullan was murdered in which the report was lodged against one Baljore, Madan and Jagdhira. Since, Meghraj (Deceased) was close to Baljore, the appellant Bhullan had suspicion that he (Meghraj) was also involved in said crime. As to the incident in question, it is stated by this witness that on that day at about 11:00 A.M., he along with his brother Meghraj (deceased) was going towards his field. When they reached near Gurukul Narsan road, the aforesaid four accused (appellants) surrounded them near the culvert. It is stated by P.W. 1, Netra Pal that appellants Bhullan and Sahendra were armed with guns while appellants Mahipal and Ram Singh were armed with country made pistols. The witness further states that Bhullan exhorted his associates that they should take revenge against Meghraj. Soon after this, each one of Bhullan, Sahendra and Mahipal fired from the firearm they possessed, at Meghraj, where after appellant Ram Singh with the butt of the pistol gave a blow on the head of Meghraj. The witness has further narrated the prosecution story by saying that the injured Meghraj fell down and started tossing about in pain. On hearing the sound of firing, witnesses Haria, Sitab, Girver and Baru also reached there. According to this witness P.W. 1, Netra Pal, the dead body of Meghraj was thereafter taken by the accused towards Jhabreda. The witnesses followed them, but they were threatened of being killed on the point of firearms, by

the appellants. Lastly, this witness states that on the way the appellants took a ‘Bhuggi’ (buffalo cart) and kept the dead body in it, where after they threw it from the cart near a ‘*Khala*’ (the logged water). P.W. 1, Netra Pal further states that he lodged the first information report (Ext. A-1) with the police Mangalore.

8) The above mentioned statement of the complainant is corroborated by the statement of P.W. 2, Haria, who has also narrated the prosecution story. This witness (P.W. 2, Haria) has stated that on hearing the sound of firearm, he saw that appellants Bhullan and Sahendra were armed with guns, while appellants Mahipal and Ram Singh were armed with country made pistols. He further sates that after getting injured Meghraj fell down on the ground. The witness further corroborates that appellant Mahipal took up the dead body of the deceased and all the four accused went towards Jhabreda. The witness further states that he along with other witnesses followed the four and saw that the dead body was kept in a ‘Bugghi’ (buffalo cart) of Nakli and after taking to some distance, the dead body was thrown away from the cart.

9) The eye account given by P.W. 1, Netra Pal and P.W. 2, Haria further gets corroboration from the statement of P.W. 5, Baru, who has also narrated the prosecution story. This witness has also stated on oath that on the date of incident, at about 11:00 A.M., when he was in the field, he heard sound of firing and saw that Bhullan and Sahendra were armed with guns while Mahipal and Ram Singh were armed with pistols. He further states that the injured

Meghraj fell on the ground. The witness further corroborates that Mahipal took the dead body of Meghraj on his shoulder and the four went towards the west and while going towards that side they threatened the witnesses of being killed. He further states that the accused (present appellants) stopped the ‘Bugghi’ of Nakli, which was being driven by Bijendra and kept the dead body on it and went further towards west and, ultimately threw the dead body from the Bugghi.

10) The statement of the three eyewitness named above, gives a natural eye account of the day light incident. Not only the eyewitness account of the incident is there on the record as against the appellant Bhullan, but also the firearm injuries received by the deceased, as narrated by the eyewitnesses get corroboration from the postmortem examination report (Ext. A-4), which is proved by P.W. 6, Dr. S.P.S. Verma. The prosecution has also established the motive behind the commission of crime by Bhullan. Having gone through the entire evidence on record, we are satisfied with the reasons mentioned by the trial court in recording conviction of appellant Bhullan in respect of offence punishable under Section 302 read with Section 34 of I.P.C. and one punishable under Section 201 of I.P.C.

11) Appellants Mahipal and Sahendra are reported to have died during the period of this appeal and the appeal as against the two already stands abated vide order dated 09.01.2007.

12) As far as appellant Ram Singh is concerned, the role assigned to him as stated by the eyewitnesses, is that of giving blow on the head of the deceased with the butt of a country made pistol. The injury report, quoted above, does not disclose any contusion or lacerated would or any other serious injury which could have been caused by such a blow, as such, the act on the part of the appellant Ram Singh cannot be said to have been corroborated with the injuries recorded in the postmortem examination report. It has come on the record in the statement of P.W. 1, Netra Pal that Ram Singh is real brother of Mahipal, who is close to appellant Bhullan. As such, dragging his name along with Mahipal due to enmity cannot be ruled out. Though, the eyewitnesses have given the evidence as against appellant Ram Singh projecting as if he has common intention with the other three appellants, but considering the above facts, it cannot be said that the charge against appellant Ram Singh is proved beyond reasonable doubt. In the circumstances, he is entitled to the benefit of reasonable doubt, as shown by learned counsel for the appellants from the facts, circumstances and the evidence, on record.

13) Mr. S.K. Agrawal, learned senior counsel appearing for the appellants argued that the Bugghi (buffalo cart) on which the dead body is said to have been taken was not recovered. On its basis it is argued that the entire prosecution story, as narrated by prosecution witnesses, cannot be believed. No doubt, the Investigating Officer has not been able to recover the Bugghi, however, in view of the natural eyewitness account of commission of murder, as

discussed above, the simple fact that the Bugghi on which the dead body was taken not recovered, in our opinion, does not create any reasonable doubt in the prosecution story, in the circumstances of the case.

14) It is further submitted on behalf of the appellants that the appellants have been falsely implicated in the commission of crime due to enmity, which was admitted between the parties. Enmity is a double edged weapon. Whether such relationship may be a reason for implicating a person falsely, or the reason for commission of crime by the accused as against the victim is to be seen from evidence on record. Since, the incident is a day light incident and the presence of the witnesses is natural, the first information report is prompt, the ante mortem injuries in the postmortem examination also corroborates the prosecution story, all these facts if read together corroborate and prove the prosecution story as against the appellant Bhullan regarding whom it is clearly mentioned that he was harbouring enmity as against Meghraj, suspecting his hand in the commission of murder of his brother Mehendra.

15) For the reasons as discussed above, in view of the aforesaid discussions, and after going through the evidence on record and hearing the parties, we do not see any force in the appeal of appellant Bhullan. Accordingly, the appeal of appellant Bhullan is liable to be dismissed. However, as far as the appeal of appellant Ram Singh is concerned, for the reasons as we have discussed above, he is entitled to the benefit of reasonable doubt and on that ground for the

reason that the charge of offence punishable under Section 302 read with Section 34 of I.P.C. and the one punishable under Section 201 of I.P.C., are not proved beyond reasonable doubt as against him, his appeal deserves to be allowed. Therefore, the appeal of appellant Ram Singh is allowed. His conviction recorded by the trial court and sentence awarded to him under Section 302 / 34 of I.P.C. and one punishable under Section 201 of I.P.C. is set aside. He is acquitted of the charge giving him benefit of reasonable doubt. The appellant Ram Singh is on bail. He need not to surrender. His bail bonds are cancelled and sureties stand discharged.

16) However, appeal of appellant Bhullan is dismissed. His conviction recorded by the trial court and sentence awarded to him are affirmed. His bail is cancelled. He shall be taken into custody forthwith the Sessions Judge, Haridwar / Chief Judicial Magistrate, Haridwar to make him serve out the sentence awarded to him. (The appeal already stands abated in respect of appellants Mahipal and Sahendra.

(Dharam Veer, J.) **(Prafulla C. Pant, J.)**

Dt. December 11, 2007.
H. Negi